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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.NO.1254 OF 2020

AND

C.M.P.NO.6815 OF 2020

S.K.J.Dhanasekar

...Petitioner / Appellant /  
Respondent

Vs.

Kalyani (died)

1.Jayanthi Sundaram

2.Ashwin

3.Dipak

...Respondents / Respondents /  
Petitioners

Civil Revision Petition is filed under Order 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, to set aside the judgment and decree in RCA.No.145 of 2014 dated 23.01.2020 passed by the VIII Small Causes Court (Rent Control Appellate Authority), Chennai, confirming the order of eviction in RCOP.No.1265 of 2012 dated 30.01.2014 passed by the XI Small Causes Court (Rent Control Authority), Chennai.

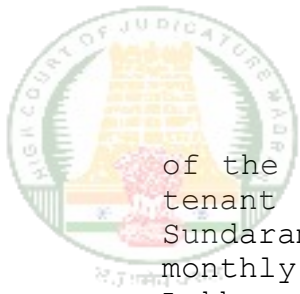
For Petitioner : Mr.R.Chandra Sudan

For Respondent : Mr.M.Shanthanaraman

ORDER

This Civil Revision Petition has been filed under Order 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 as against the order and decretal order dated 23.01.2020 passed in RCA.No.145 of 2014 on the file of VIII Small Causes Court, Chennai, confirming the order and decretal order dated 30.01.2014 passed by the XI Small Causes Court, Chennai in RCOP.No.1265 of 2012.

2. The petitioner herein is a tenant under the respondents and the respondents are legal heirs of one Late Sundaram. Originally, the RCOP.No.1265 of 2012 was filed by the respondents seeking an order of eviction, directing the petitioner / tenant to vacate and handover the vacant possession



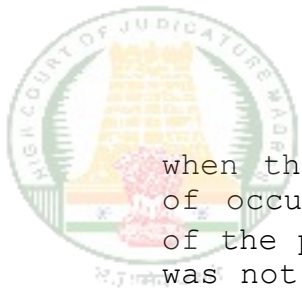
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of the schedule mentioned property. The landlords claim that the tenant based on the lease agreement entered with the Late Sundaram came into occupation of the schedule premises on a monthly rent of Rs.7,500/-during November 2000 and paid Rs.1 Lakh as advance. At the time of instituting the proceedings, the tenant was paying Rs.13,000/- per month as rent, and after expiry of the lease period, the lease was neither extended nor renewed by the Late Sundaram. The landlords further claim that initially they were all living as joint family at Pallavaram, and after the death of the said Sundaram on 31.05.2007, they found it very difficult to live in the house at Pallavaram as certain misunderstanding took place with the other family members. The 2<sup>nd</sup> respondent who is an Engineering Graduate and previously working at Guindy wanted to pursue his higher studies and wanted to live within the city limits for seeking better opportunity. Hence the landlords, legal heirs of Late Sundaram, has requested the petitioner / tenant to vacate the petition premises for their own use and occupation.

3. Immediately, the tenant has sent a legal notice dated 24.11.2008 through his counsel requesting time till July 2009 to find out an alternative accommodation. As per the request made by the petitioner / tenant, the landlords have given time till July 2009, but the tenant did not vacate the petition premises even after July 2009. Hence the landlords have issued a termination of lease notice on 15.12.2009 and asked the petitioner / tenant to vacate the petition premises within a period of two months from the date of receipt of the said notice. In spite of repeated requests made by the respondents / landlords, the petitioner has not come forward to vacate the premises. Hence the landlords were constrained to file a petition in RCOP.No.1265 of 2012 before the Rent Control Authority at Chennai seeking eviction of the petitioner on the ground of owners use and occupation.

4. The petitioner / tenant has filed a counter denying the entire allegations except the tenancy under the respondent / landlord and sought for dismissal of the said petition. The Learned Rent Controller by order and decretal order dated 30.01.2014 held that the requirement of the landlords is bonafide and allowed the petition granting two months time to the petitioner / tenant to vacate the premises. Thereafter, the tenant preferred an appeal in RCA.No.145 of 2014 which also came to be dismissed by the First Appellate Authority upholding the order of the Rent Control Authority at Chennai. As against which, the present revision petition has been filed by the petitioner / tenant.

5. The learned counsel for the petitioner submits that the Appellate Authority ought to have allowed the appeal, especially



when the respondents had suppressed their own alternative place of occupation within the city limits at Adyar. The requirement of the petition premises for the higher studies of 3<sup>rd</sup> respondent was not there at the time of filing the petition, because as PW1 the 3<sup>rd</sup> respondent himself has admitted during the cross examination that he completed his higher studies even prior to filing of the petition.

6. The learned counsel for the petitioner further submits that since the respondents have admitted that they own a flat at Adyar within the city limit, the necessity of the present place where the tenant resides does not arise. On this ground, the Appellate Authority ought to have allowed the appeal and dismissed the Rent Control Original Petition since the landlords have made false claim before the Rent Controller as if they require the residential place where the tenant is leased out. Having not proved their bonafide requirement, the Appellate Authority ought to have allowed the appeal.

7. The learned counsel appearing for the respondents/ landlords submits that the bonafide requirement arose immediately after the death of the Late Sundaram when they were all living as joint family at Old Pallavaram, and immediately when the Sundaram died, the landlords have approached the tenant, asking him to vacate and handover the leased out portion, but the tenant who had already accepted to vacate the same within July 2009 has not vacated and handover the same to the respondents / landlords. Further, he submits that their bonafide requirement of the premises have rightly been proved by the land owners, the same has been taken into account by both the Rent Controller and the Rent Control Appellate Authority in a right perspective and proper consideration was given based on the oral evidence as well as the documentary evidence filed by the landlords and only thereafter the eviction order has been passed. Hence he pleads for dismissal of the present revision petition.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

9. In this case, the relationship of landlord and tenant is not disputed by both the parties. It is not denied by either party, especially the tenant herein that he came as a tenant under Late Sundaram pursuant to the lease agreement dated 30.10.2000. The tenanted portion is an independent house admeasuring 2,400 Sq.ft, consisting of ground floor and first floor at West Mambalam. This fact is also not denied by the tenant. The only resistance shown by the tenant is that the landlords own a flat at Adyar. As they a own a flat at Adyar



which is within the city limit, there is a bar under Section 10 (3) (a) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, and the question of evicting the tenant does not arise. Apart from that, the tenant has resisted the petition on the ground that the bonafide requirement of the petition premises was not proved. The question which has been raised before this Court is that whether the landlords have proved their bonafide requirement for seeking eviction of the residential house tenanted to the petitioner herein.

10. This Court is not able to accept the contention put forth by the learned counsel for the petitioner. According to the pleadings in RCOP.1265 of 2012, the landlords at Paragraph No.6 have stated their bonafide requirement, especially the change of circumstances that took place immediately after the death of Late Sundaram when they were all living as joint family at Pallavaram, which was certainly in the outskirts of the city during 2007 - 2008. It is quite logic that when the family head suddenly dies, there will be certain resettlement among the family members. Hence the request made by the legal heirs of Late Sundaram that they are in requirement of the house at West Mambalam which was leased out to the revision petitioner herein cannot be stated as not bonafide. The revision petitioner has not denied the contents of the statement in Ex.P3 which is a reply notice sent by the tenant dated 24.11.2008 which is as follows "You have been insisting and pressuring my client to vacate the premises. My client has brought to your attentions that he is willing to do so provided that he be given a reasonable times and opportunity to look for alternate accommodation".

11. It is clearly seen from the reply notice marked as Ex.P3 which is not denied by the revision petitioner herein that the tenant had accepted to vacate the premises and sought time till July 2009, and thereafter, retracting from his own admission, he claims that the landlords have suppressed their bonafide requirement, especially when they own a flat at Adyar, and this Court is unable to accept the same.

12. It is an admitted fact that the landlords own a flat at Adyar. However, the leased out house is an independent house consisting of ground floor and first floor and anybody will like to live in an independent house rather than living in a flat if they have a chance of opting to live. Merely because the landlords own an another residential house within the city limit does not prohibit the landlords to claim evicting of an independent house for their own use and occupation. Moreover, the tenant has no right to dictate terms to the landlords where they have to live. The choice is not given to the tenant unlike if the tenanted portion is a non residential place where there



would be likely hood of stalling the lively hood of the tenant if he is evicted suddenly.

13. The Appellate Authority while confirming the order of the Rent Control Authority has given categorical finding for each and every ground raised by the petitioner herein, especially at Paragraph No.17, which reads as follows :

"As per section 10(3)(a)(i) of the TNBLR Act the landlord can apply eviction for his residential purpose, if he or any of his family member is not occupying their residential building of his own in the City, therefore as on date of filing Rcop the petitioners/respondents are not occupying any premises of their own in the City of Chennai, therefore the flat owned by the respondent at Adyar is not bar to file a petition u/s.10(3)(a)(i) of the Act, Pw1 is 3<sup>rd</sup> petitioner who is competent person to give evidence for him and on behalf of other respondents also, moreover the tenant cannot dictate the terms of landlord, it is pertinent to note that the tenant himself sent a legal notice under Ex.P3 and sought for time to handover the possession till July 2009 only, no oral and documentary evidence produced on the side of tenant to disprove the case of petitioners, the West Mambalam is more prime area in the Chennai City, so the petition schedule premises is more suitable for the landlords, in these circumstances this authority is come to conclusion that the requirement of the building by the landlords is bonafide one, the point number 1 is answered accordingly."

14. On a perusal of the above observation made by the Learned Rent Control Appellate Authority, the Appellate Authority has rightly applied his judicial mind and has given proper reasons for dismissing the appeal filed by the petitioner herein. Hence, this Court is of the view that the revision petitioner / tenant has not made out any ground to interfere with the order passed by the Rent Control Appellate Authority in RCA.No.145 of 2014 dated 23.01.2010.

15. Accordingly, the revision petitioner is directed to vacate the petition premises and handover the same to the respondents / landlords within 30 days from the date of pronouncement of the order. If he fails to vacate the same within the said period, the respondents can evict the petitioner with the aid of police.



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16. In view of the above observation and direction, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Deputy Registrar

// True Copy //

Sub Assistant Registrar

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To

- 1.The XI Small Causes Judge,  
The XI Small Causes Court,  
Chennai.
- 2.The VIII Small Causes Judge,  
The VIII Small Causes Court,  
Chennai.

Copy To

The Section Officer,  
V.R.Section,  
High Court, Madras.

+1cc to M.Santhana Raman, Advocate SR.No.28850

+1cc to M/s.Ahmad Associates, Advocate SR.No.28823

C.R.P.No.1254 of 2020  
and  
C.M.P.No.6815 of 2020

SRA(CO)  
RVM(01/12/2021)